IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.352 OF 2003

1. Tanaji Dnyanu Yadav
2. Suresh Shamrao Yadv ...Appellants

Vs.

1. Akkatai w/o Ganpati Yadav
(since deceased through heirs)
1. Sonabai Dnyanu Kadam
2. Sakhubai Raghunath Sevade
3. Bhamabai Shamrao Bhole
4. Ananda Ganapati Yadav
5. Bhimrao Ganpati Yadav ...Respondents

Shri A.M.Kulkarni for the Appellants
Shri Pratap Patil for the Respondent Nos. 1 to 5.

CORAM: A.S.OKA, J.
DATED: AUGUST 11, 2004.

P.C.:

1. Heard the Counsel appearing for the parties. The Appeal is filed by the original Defendant Nos.3 and 4. The Respondent Nos.1 to 3 are the original Plaintiffs. A suit was filed by the Respondent Nos.1 to 3 for partition and separate possession. Admittedly, the suit lands were ancestral properties in the hands of the deceased Ganpati who was the husband of the Plaintiff No.1 Akkatai. The said Ganpati expired on 20th April 1950. The said Ganpati died leaving behind his widow i.e. the Respondent No.1 Akkatai and sons Ananda, Hindurao, Shamrao and Bhimrao and daughters Sonabai, Sakhubai and Bhamabai. Hindurao died unmarried. Shamrao died leaving behind his son Suresh. Bhimrao has two sons viz. Hanmant and Tanaji. Respondent Nos.1 to 3 are the

daughters of deceased Ganpati. The challenge in the suit is also to the sale deed executed in favour of the original Defendant No.4 i.e. appellant No.1 herein.

2. The Courts below held that by virtue of Hindu Women's Right to Property Act,1937 (hereinafter referred to as the said Act of 1937) the Respondent No.1 became entitled to one fifth share of the property and as a result of coming into force of the Hindu Succession Act, 1956 the limited interest of the Respondent No.1 was converted into perfect interest.

3. The main contention raised by the learned Counsel appearing for the Appellants is that the suit land was situated in erstwhile Sangli Sansthan(Eastwhile State) and therefore the provisions of the said Act of 1937 were not applicable. He submitted that when Ganpati expired, the said Act of 1956 was not obviously in force and the Respondent Nos.1 widow was not entitled to inherit any share in the properties held by deceased Ganpati. He submitted that the sale was effected by the Appellant No.2 in favour of the Appellant No.1 after obtaining permission of the District court. In the said proceedings, a public notice was issued. He submitted that even after publication of the notice, no one raised any objection. He submitted that therefore the Appellant No.1 will have to be treated as a bonafide purchaser.

4. I have considered both the contentions. So far as the first contention is concerned, there is nothing on record to show that the suit land was situated in Sangli Sansthan

(State). If the contention of the Appellants was that the position of the said Act of 1937 are not applicable as the suit land was situated within the Sangli Sansthan, it was for them to plead and establish the said fact. The learned Counsel for the Appellant submitted that in view of the said submission an order of remand should be passed so that the Appellants can establish that the suit land was situated within the limits of the erstwhile Sangli Sansthan. The said prayer cannot be considered for more than one reason. The suit is of the year 1986 and it will be unjust to the Respondents-original Plaintiffs if the order of remand is passed after lapse of 18 years. Secondly, no reason is assigned as to why the said contention was not specifically raised in the Courts below.

5. In absence of any material on record to establish the fact that the suit land was situated in Sangli Sansthan the Appellate Court is right when it came to the conclusion that the original Plaintiff No.1 was entitled to benefit of provisions of the said Act of 1937.

6. In so far as the second contention is concerned the main question is whether the Defendant No.3 was entitled to sell anything in excess of the undivided share held by him. Merely because the District Court granted permission after issuance of a public notice, it will not confer title on the seller which was not vesting in him. No substantial question of law arises in this Second Appeal.

7. Second Appeal is dismissed with no order as to costs.

Judge.